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United States District Court  
Middle District Tennessee

2016 NOV 17 PM 3:10

) Craig Cunningham  
) Plaintiff, Pro-se  
)

PETER OPPENEER  
CLERK US DIST COURT  
WD OF WI

) v.  
)

CIVIL ACTION NO **16 C 761**

) Michael Montes, Tollfreezone.com, Inc., Mydataguy.com, LLC,  
PODmusicgear.com, Inc., Tollfreezone.com, Inc., dba Docauditor.com,  
Tollfreezone.com, Inc., dba mobile trackme, Emailmyvmail.com, Inc.  
) John/Jane Doe 1-10  
) Defendants.

### **Plaintiff's Original Complaint**

1. The Plaintiff in this case is Craig Cunningham, a natural person and was resident of Davidson County at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, ste 248, Nashville, TN 37211
2. Tollfreezone.com, Inc., dba docauditor.com, dba mobile trackme is a currently defunct corporation that was registered in the state of California. The sole owner/officer is Michael Montes. The corporate authorization currently is listed as suspended. Michael Montes can be served at his home 1731 50<sup>th</sup> Street, Somerset, WI 54025.
3. PODmusicgear.com, Inc., is Delaware Corporation that can be served via corporate officer/owner Michael Montes at his home address of 1731 50<sup>th</sup> Street Somerset, WI 54025.
4. Mydataguy.com, Inc is a defunct Nevada corporation with a corporate officer of Michael Montes who can be served at 1731 50<sup>th</sup> Street, Somerset, WI 54025.

5. Emailmyvmail.com Inc. is a defunct Nevada corporation with a corporate officer of Michael Montes holding all positions and can be served at 1731 50<sup>th</sup> Street, Somerset, WI 54025.
6. John/Jane Does 1-10 are currently unknown persons or entities that are also liable for the calls in question.

#### **Jurisdiction**

7. Jurisdiction of this court arises as the acts happened in this county
8. Venue in this District is proper in that the defendants transact business here, and the acts and transactions occurred here.
9. The Defendants regularly had calls placed for their benefit or on their behalf to residents across the country including the Plaintiff.

#### **FACTUAL ALLEGATIONS**

10. In 2015 and 2016, the Plaintiff received multiple calls from a variety of get-rich-quick and illegal pyramid schemes. The calls were to the Plaintiff's cell phone using an automated telephone dialing system, as there was a noticeable delay between the call connecting and the pre-recorded message beginning. The Plaintiff never consented to being called by an automated telephone dialing system to his cell phone. The calls were not related to any emergency purpose.

11. The caller ID numbers are spoofed so that the network connecting the calls is masked and they can hide the true entity of the callers placing the calls.
12. The Plaintiff received no less than 200 calls by Michael Montes controlled entities for which the Plaintiff is seeking to recover damages for in this case.
13. In total, damages alleged by the Plaintiff are \$600,000 for statutory violations of the TCPA.
14. The Defendants also used an automated telephone dialing system to call the Plaintiff's cell phone in violation of the TCPA, 47 USC 227(b) and 47 USC 227(c)(5) as codified under 47 CFR 64.1200(b)
15. The calls violated 47 USC 227(b) as the calls were automated and placed to the Plaintiff's cell phone without the Plaintiff's consent and without an emergency purpose.
16. The calls violated 47 USC 227(c)(5) by violating 47 CFR 64.1200(b) as the artificial or pre-recorded message failed to state at the beginning of the message the identity of the business, individual, or entity that is responsible for initiating the call. In fact, no name was given for the entity placing the call and even the agents only stated who they were calling from after the Plaintiff asked repeatedly.
17. These calls were knowingly and willfully placed and the Defendants had or should have ascertained they were calling the wrong person.

**Actual Damages**

18. Plaintiff has suffered actual injury as a result of Defendant's telephone calls, including, but not limited to:

- Reduced Device storage space;
- Data usage;
- Plan usage;
- Lost time tending to and responding to the unsolicited texts;
- Invasion of Privacy and loss of concentration

### **Corporate Officer liability**

19. The individual corporate officer Michael Montes is liable for the calls placed on behalf of his corporation. He is personally liable for the TCPA damages as they had direct, personal participation in causing the illegal telephone calls to be made as well as they directly authorized the illegal telemarketing calls to be made.

20. Michael Montes also failed to take efforts to implement appropriate policies or procedures designed to comply with the TCPA which makes him personally liable for the telephone calls made on their behalf and for their benefit.

21. These phone calls violated the TCPA in two ways, first by placing multiple automated telephone calls to the Plaintiff's cell phone in violation of 47 USC 227(b), and second by not conforming to the requirements of 47 USC 227(c)(5) and the FCC's rulemaking authority under 47 CFR 64.1200(d), which requires the defendants to have a written policy for maintaining a

do-not-call list, failure to train agents and personnel engaged in telemarketing on the use of the do-not-call list, and the failure to identify the party placing the call or the entity for which the call is being placed. Each of the Defendants are jointly liable to the Plaintiff in the amount of \$3,000 per call made, \$1500 for violating 47 USC 227(b) and \$1500 for violating 47 USC 227(c)(5).

22. The Plaintiff alleges direct liability for the listed corporations and the officers of the corporations. Additionally, the officers of the corporations have a direct role in the illegal conduct, authorizing it and ratifying the illegal telephone calls.

23. The officers of each and every listed corporation had direct, personal conduct in authorizing the telephone calls or oversaw and directed the telemarketing efforts for which their corporations benefitted. The officers set company policy and directed the marketing efforts of the respective companies.

24. Michael Montes has a long history of violating the TCPA and making illegal telemarketing calls to consumers. He has been sanctioned by multiple attorney generals and state regulatory agencies for placing illegal calls to consumers.

**CAUSES OF ACTION:**

**COUNT I**

**Violations of the Telephone Consumer Protection Act (TCPA)**

25. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

26. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by using an autoated telephone dialing system to place calls to the Plaintiff's cell phone in violation of 47 USC 227(b).This entitles the Plaintiff to recover \$1500 per call.

**CAUSES OF ACTION:**

**COUNT II**

**Violations of the Telephone Consumer Protection Act (TCPA)**

27. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

28. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by 47 USC 227(c)(5) by way of 47 CFR 64.1200(d) and failed to comply with the requirements to maintain and train employees on the use of a do-not-call list.

**PRAYER FOR DAMAGES AND RELIEFS**

- A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against each and every defendant for the following:
- B. Statutory damages of \$3000 for each phone call for each defendant mentioned in the call
- C. Actual damages as determined at trial

- D. Pre-judgment interest from the date of the phone calls
- E. Attorney's fees for bringing this action; and
- F. Costs of bringing this action; and
- G. For such other and further relief as the Court may deem just and proper

I, Craig Cunningham, Affiant, hereby attest to and certify that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief and that a true and correct copy of the foregoing was sent to the defendants in this case.

  
Respectfully submitted November 11, 2016

Craig Cunningham Plaintiff, Pro-se, 615-348-1977

5543 Edmondson Pike, ste 248, Nashville, TN 37211